

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

STACY DIONNE STENSON,

Plaintiff,

CIVIL ACTION NO. 5:21-CV-00018-RWS

DOLLAR GENERAL CORP. DOLGEN CORP OF TEXAS, INC. D/B/A DOLGEN CORP TEXAS, INC. #14492 D/B/A DOLLAR GENERAL, ARC DGTXRT001 LLC,

Defendants.

ORDER

Before the Court is the Report and Recommendation of the United States Magistrate Judge (Docket No. 53), which contains her findings, conclusions and recommendation for the disposition of this matter. The Court hereby adopts the Report and Recommendation of the Magistrate Judge (Docket No. 53) as the findings and conclusions of this Court. Plaintiff Stacy Stenson filed the above-captioned civil action alleging claims of premises liability, negligence and gross negligence. Docket No. 8. The case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636 and the applicable orders of this Court. Defendants answered the lawsuit (Docket No. 41) and filed a motion for summary judgment (Docket No. 44). After review of the pleadings and evidence, the Magistrate Judge issued a Report recommending Defendants' Motion for Summary Judgment (Docket No. 44) be granted and the lawsuit be dismissed with prejudice. Docket No. 53.

As noted in the Magistrate Judge’s Report, “[u]nder Texas law, negligence consists of four essential elements: (1) a legal duty owed to the plaintiff by the defendant; (2) a breach of that duty; (3) an actual injury to the plaintiff; and (4) a showing that the breach was the proximate

cause of the injury.” Docket No. 53 at 15 (citation omitted). Premises liability requires a plaintiff to prove the same essential elements of a negligence claim in addition to showing that “(1) the premises owner or operator had actual or constructive knowledge of the complained-of condition; and (2) the complained-of condition posed an unreasonable risk of harm.” *Id.* at 15–16 (citation omitted). As further noted in the Magistrate Judge’s Report, “[t]o recover for gross negligence in Texas, a plaintiff must satisfy the elements of an ordinary negligence or premises liability claim *and* demonstrate clear and convincing evidence of ‘an act or omission involving subjective awareness of an extreme degree of risk, indicating conscious indifference to the rights, safety, or welfare of others.’” *Id.* at 48 (citation omitted).

Regarding Plaintiff’s negligence and premises liability claims, the Magistrate Judge found that Plaintiff “failed to establish the elements of an ordinary negligence or premises liability claim.” Docket No. 53 at 50. Regarding Plaintiff’s gross negligence claim, the Magistrate Judge found that Plaintiff failed to further “demonstrate clear and convincing evidence of an act or omission involving subjective awareness of an extreme degree of risk, indicating conscious indifference to the rights, safety, or welfare of others.” *Id.* The Magistrate Judge also found “there is insufficient evidence that Defendants knew about the risk and that Defendants’ actions, or lack thereof, could rise to the level of gross negligence.” *Id.* at 50.

Plaintiff filed no objections in response to the Report and Recommendation of the Magistrate Judge.

The Court has reviewed the pleadings in this cause of action and the Report of the Magistrate Judge. Upon such review, the Court concludes that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (where no objections to a Magistrate Judge’s report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”), *cert. denied*, 492 U.S. 918 (1989). Accordingly, it is

ORDERED that the Report of the Magistrate Judge (Docket No. 53) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that Defendants' Motion for Summary Judgment (Docket No. 44) is **GRANTED**. It is further

ORDERED that Plaintiff's above-titled cause is **DISMISSED WITH PREJUDICE**. It is further

ORDERED that any and all motions currently pending in this civil action are hereby **DENIED-AS-MOOT**.

So ORDERED and SIGNED this 18th day of February, 2022.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE